IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3382 of 2007
To
FIRST APPEAL No. 3388 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
CHHAGANBHAI GULABBHAI - Defendant(s)

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Appearance :
MR SUNIT SHAH, GP for Appellant(s) : 1 – 3 in First Appeal Nos.3382 to 3384 of 2007.

MS REETA CHANDARANA, AGP for Appellant(s) : 1 – 3 in First Appeal Nos.3385 to 3388 of 2007.
MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 08/08/2007

ORAL JUDGMENT

1. Admit. Mr.A.J.Patel, learned advocate waives service of admission on behalf of the claimant.

2. The State of Gujarat-through the Secretary, Narmada Water Resources Water Supply and Kalpsar Department, Sachivalaya, Gandhinagar and others, appellants have filed these First Appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') challenging the common judgment and award dated 31/12/2004 passed by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case Nos.1953 to 1959 of 1997, the main case being Land Acquisition Reference Case No.1953 of 1997. By the impugned judgment, the learned Judge was pleased to partly allow the reference applications with proportionate costs. By the said judgment and order, the learned Judge has awarded Rs.2,283/- per ARE for the acquired lands.

3. It may be noted that the Land Acquisition Officer has awarded only Rs.304/- per ARE. However, the

learned Judge has awarded additional Rs.1,979/- per ARE, so, i.e. (Rs.304/- + Rs.1,979/- per ARE)= 2283 per ARE total . The learned Judge has held that the claimants are also entitled to get increase at the rate of 12% per annum from the date of publication of notification under Section 4 of the Act i.e. from 27/3/1996 to the date of award passed by the Special Land Acquisition Officer, i.e. 27/3/1997 as provided under Section 23(1-A) of the Act and further that the claimants are entitled to 30% solatium and running interest at the rate of 9% per annum for the period of one year from the date of taking over the possession of the acquired lands and thereafter at the rate of 15% per annum on aggregated amount i.e. Additional award, solatium and 12% increase under Section 23(1-A) of the Act till the entire amount is fully paid or deposited.

4. I have heard Ms.Reeta Chandarana, learned AGP appearing on behalf of the appellants in this behalf. I have also heard Mr.A.J.Patel, learned Senior Counsel appearing for respondents-claimants.

5. The learned AGP for the appellants have stated that the lands admeasuring 10437 sq.mtrs. of village Gajera, District Bharuch, were proposed to be acquired for the public purpose of Narmada Project by the State Government. The Notification under Section 4 of the Act, for the said purpose was issued on 27/3/1996. Thereafter, the necessary inquiry was conducted under Section 5(A)2 of the Act and on the basis of the report submitted by the Special Land Acquisition Officer, notification under Section 6 of the Act was published in the Official Gazette on 8/8/1996. Thereafter, after following due procedure under the Act, ultimately, the Special Land Acquisition Officer by his award dated 27/3/1997, awarded Rs.304/- per ARE, i.e. Rs.3.04 per sq. mtr. for the acquired land.

6. As the claimants were being aggrieved and dissatisfied with the said award, they filed the Reference Cases before the District Court, Bharuch, which were numbered as Land Reference Case Nos.1953 to 1959 of 1997 in this behalf. Along with the judgment, the Schedule has also been produced

indicating the Land Reference Number, Name of claimant, Block Number, area of land, market value of land at Rs.2,283/-, 30% solatium, 12% additional amount from 27/3/1996 to 27/3/1997, compensation paid by the Land Acquisition Officer and Compensation to be paid.

7. Before the District Court, the claimants prayed for Rs.100/- per sq. mtr. i.e. Rs.10,000/- per ARE. However, the learned Judge has awarded in all, Rs.2,283/- per ARE i.e. Rs.22.83 per sq. mtr. which can be rounded of to Rs.24/- per sq. mtr. It may be noted that the Special Land Acquisition Officer has awarded only Rs.3.04 per sq. mtr., but the learned Judge has awarded Rs.19.79 per sq. mtr. as additional compensation as mentioned here in above.

8. Mr.A.J.Patel, learned Senior Counsel for the claimants has assailed the judgment and order of the learned District Judge on several aspects. Before the trial Court, the claimants have based their claim only on the previous award. The claimant Dahyabhai Shanabhai Patel has deposed at

Exh.14 and contended that their lands were acquired in common land acquisition case and their village is situated in the sim of village Gajera which were adjacent to the sim of village Uchhad, meaning thereby the lands of both the villages were having common boundary, and therefore, the award passed in main Land Reference Case No.872 of 1987 is relevant for the determination of the present land reference cases. He has further deposed regarding various judgments of the Hon'ble Apex Court as well as of this Court. It is contended that in the previous award the value of the acquired lands was fixed at Rs.7.10 per sq.mtr. and the notification under Section 4 of the Act in the previous award was published on 8/12/1983 while the notification under Section 4 of the Act in the present reference cases was published on 27/3/1996 and therefore, they are also entitled for the price rise at the rate of 12% and not at the rate of 10%. It is further contended that the price rise is required to be given at the average rate after consolidating the price rise at the rate of 10% and 12%. He has further deposed as to the consequential reliefs which requires to be

given under the provisions of the Act and worked out the value of the lands acquired at the rate of Rs.23.10 per sq. mtr. He has been cross examined by the opponent and admitted that he has not obtained and produced his price testimony report to show that the lands of village Uchhad and lands of village Gajera were of the same fertility. He has denied as to the sale instances of lands of his village and further denied that he has not produced any sale deed which was of low price.

9. The learned Judge after going through the record has come to the conclusion that village Uchhad and village Gajera are adjacent to each other having common revenue boundary. So far as village Umra is concerned, it has not been mentioned as adjacent village in copy Exh.19. Moreover, the opponents have not put any suggestion during the cross examination of the claimant that village Umra is adjacent or having common boundary with the revenue limit of village Gajera. No one has deposed on behalf of the opponents. The learned Judge, in view of the evidence recorded before the trial Court has

come to the conclusion that the previous award passed for the lands acquired of village Umra is not relevant as the opponents failed to establish that village Gajera and village Umra are adjacent or lands acquired in both the cases were of the same vicinity and therefore, the previous award Exh.19 was not required to be considered as it is irrelevant for the purpose of determination of the value of the lands under the present reference cases.

10.The learned Judge has further held that so far as the previous award is concerned, it was passed by the learned Assistant Judge, Bharuch and awarded Rs.710/- per ARE. It has been further held that the date of notification under Section 4 of the Act in previous award was 4/12/1983 while the notification under Section 4 of the Act in the present reference cases was 27/3/1996. In view of the same, the notification under Section 4 of the Act in the present land reference cases is later by thirteen years and therefore, relying upon previous award Exh.12 the claimants are also entitled for the

price rise at the rate of 10% per annum and in all they are entitled for 130% towards the price rise meaning thereby the value of the acquired lands comes to Rs.1,633/- per ARE on the date of notification under Section 4 of the Act under the present reference cases.

11. The learned Judge, thereafter considered the judgments of the Hon'ble Supreme Court and of this Court and also the previous award which has been produced at Exh.12 in relation to village Uchhad. After referring to Exh.12, it has been held that there is a gap of more than thirteen years between the notification under Section 4 of the present land reference cases and the previous award Exh.12. Therefore, if the price rise at the rate of 10% progressively is granted, it would be just and adequate. In view of the same, the learned Judge has awarded Rs.2,283/- per ARE for the acquired lands.

12. The learned AGPs submitted that on behalf of the acquiring body, no witness has been examined.

Mr.A.J.Patel, learned Senior Counsel appearing for the claimants submitted that this Court has examined the entire record as the paper book in detail has been submitted and considered the oral as well as documentary evidence adduced before the Reference Court.

13.It is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the assertion made by the witness for claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has almost gone unchallenged. The fact that the boundaries of two villages are adjoining to each other is not in dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from

the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court for the purpose of determining market value of the lands acquired in the instant case.

14. On re-appreciation of the evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the Reference Court that the claimants were entitled to enhanced compensation on the basis of previous award of the Reference Court relating to the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned Counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the rate of Rs.0.71 per sq. mtr. for thirteen years and if calculation is made on this basis, the claimants in all would be entitled to Rs.16.50 per sq. mtr. and not Rs.22.83 per sq. mtr. as calculated by the Reference Court, which can be rounded off to Rs.23/- per sq. mtr. Thus, the

finding recorded by the Reference Court will have to be modified by holding that the claimants are entitled to compensation of Rs. 16.33 per sq. mtr. which can be rounded of to Rs.16.50 per sq. mtr. and in all, the total compensation will of Rs.16.50 per sq. mtr.

15. For the foregoing reasons, all these appeals are partly succeed. The common judgment and award dated 31/12/2004 rendered by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case Nos. 1953 to 1959 of 1997 awarding compensation to the claimants in all at the rate of Rs.2,283/- per sq. mtr. for their acquired lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.16.50 per sq. mtr. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated here in above. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(K.M.Mehta, J.)

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